IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 390 OF 2006
IN
NOTICE OF MOTION NO. 588 OF 2005
IN
SUIT NO. 526 OF 2005

Tax Recovery Officer and anr. .....Appellants

Versus

Sohanikumari S.Gouti and Ors. ....Respondents

Mr. Beny Chatterjee with Mr. Shiv Motriya, instructed by Mrs. P.P. Bhosale, for the appellant.
Mr. G.R. Joshi with Mr. Manish Joshi, instructed by M/s. Vimadalal & Co. , for the respondents.

CORAM: **KSHITIJ R. VYAS, C.J.** &
ABHAY .S. OKA, J.
DATE: **JUNE 22, 2006**.

P.C.

The appellants challenged the order dated 17th March, 2006 passed in Notice of Motion No. 588 of 2005 in Suit No. 526 of 2005. By the said order, the learned single Judge confirmed the ad-interim order granted earlier i.e. 28th February, 2005 as the appellants did not appear or filed any reply.

2. The learned counsel appearing for the appellants submitted that in fact the appearance of the Advocate for the appellant was not shown on the cause list of 17th March, 2006 and for that reason they

could not appear. He stated that the appellant had filed the reply. The learned counsel appearing for the respondent disputes the above statement of the learned counsel for the appellant. Without entering into any controversy, in our opinion, the following order is passed to meet the ends of justice.

(i) The impugned order is set aside and the Notice of Motion is restored.

(ii) The learned single Judge is directed to take into consideration the reply of the appellants and after hearing the learned counsel for the parties to pass appropriate order.

(ii) In the meantime, ad-interim order dated 28th February, 2005 to continue till the disposal of the Notice of Motion.

With the above directions, the Appeal stands disposed of.

CHIEF JUSTICE

ABHAY S. OKA, J.